

**IN THE UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF GEORGIA  
MACON DIVISION**

**GREGORY LINSTON GILLILAN,**

**Plaintiff,**

**v.**

**SHENECA KING, *et al.*,**

**Defendants.**

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**CIVIL ACTION NO. 5:11-CV-96 (MTT)**

**ORDER**

This matter is before the Court on the Recommendation of United States Magistrate Judge Charles H. Weigle. (Doc. 15). The Magistrate Judge recommends granting Defendant Sheneca King's Motion to Dismiss because the Plaintiff failed to exhaust his administrative remedies prior to filing suit, as required under the Prison Litigation Reform Act, 42 U.S.C. § 1997e(a). The Plaintiff did not respond to the Defendant's Motion to Dismiss, and therefore the Defendant's claim that the Plaintiff failed to exhaust his administrative remedies is uncontested.

The Plaintiff has been given every opportunity to respond to the Motion, and was, on numerous occasions, ordered to show cause for his failure to respond to various court orders or face dismissal pursuant to Rule 41(b). To date, no response has been filed by the Plaintiff. Because of the Plaintiff's failure to prosecute this action, the Magistrate Judge recommends that the action be dismissed with prejudice.

Although the Court agrees that the Plaintiff's case should be dismissed, the Court concludes that the Plaintiff's case should be dismissed without prejudice, rather than with prejudice, as the Magistrate Judge recommended. "A dismissal with prejudice,

whether on motion or sua sponte, is an extreme sanction that may be properly imposed only when ... the district court specifically finds that lesser sanctions would not suffice.”

*Betty K Agencies, LTD. v. M/V Monada*, 432 F.3d 1333, 1337-38 (11th Cir. 2005)

(internal quotation marks and citation omitted). Here, the Court is not convinced that the lesser sanction of dismissal without prejudice would not suffice. Accordingly, to the extent the Recommendation recommends granting the Defendant’s Motion to Dismiss and dismissing the Plaintiff’s case, the Recommendation is adopted and made the order of this Court. However, the dismissal will be **without prejudice**.

**SO ORDERED**, this 7th day of October, 2011.

S/ Marc T. Treadwell  
MARC T. TREADWELL, JUDGE  
UNITED STATES DISTRICT COURT